IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 176 of 1994

For Approval and Signature:

THE HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JENABIBI WD/OF USMANMIYA B SHAIKH & 3 - Petitioner(s)

Versus

BISMILLAHBIBI WD/OF FAZLUDDIN I SAIYED & 2 - Respondent(s)

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Appearance :
Petitioner No(s).: 1,2,3. SERVED
NOTICE SERVED for Respondent No(s).: 1,2.
MR SK BUKHARI for Respondent No(s).: 1 - 1.
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CORAM :THE HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 27/06/2005

ORAL JUDGMENT

Feeling aggrieved by the judgment and order dated 26th February, 1993 passed by the learned Joint District Judge, Vadodara in Regular Civil Appeal No.15/1984, the respondents (plaintiffs in Rent Suit No.495/1980) have preferred the present Revision Application under Section

29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as "**the Rent Act**").

The petitioners-plaintiffs are the owners of the suit building situated at Vadodara. One room in the suit building was leased to the defendant no.1 for a monthly rent of Rs.25=00. As the defendant was in arrears of rent since 1st July, 1972, the plaintiffs instituted Rent Suit No.495/1980 in the Court of Small Causes, Vadodara for recovery of possession of the suit premises and of amount of arrears of rent. In answer to the notice of demand given under Section 12(2) of the Rent Act the defendant-tenant raised dispute as to the standard rent. The suit was contested by the defendant vide Exh.11. The defendant denied that he was in arrears of rent as alleged. According to the defendant, in answer to the suit notice he had tendered the amount of rent due. However, the plaintiffs did not accept the rent. According to the defendant the plaintiffs were not the only owners of the suit premises and that the suit was bad for non-joinder of necessary parties; that the agreed rent of Rs.25=00 was not the standard rent; that in answer to the suit

notice the defendant tendered the amount of arrears of rent by Money Order but the plaintiffs refused to accept the same. It was contended that the defendant was entitled to protection against the eviction as envisaged by Section 12(3)(b) of the Rent Act.

The learned trial Judge, by judgment and order dated 23rd November, 1983, held that the defendant no.1 was the tenant in arrears of rent since 1st July, 1972 as alleged; that the standard rent of the suit premises was Rs.25=00 per month; that pending the suit the defendant did not pay or deposit the amount of rent then due nor did he pay the rent pending the suit. The learned trial Judge held that the defendant no.1 had committed breach of the conditions mentioned in Section 12(3)(b) of the Rent Act. The learned trial Judge was, therefore, pleased to pass decree for possession against the defendant no.1. Feeling aggrieved, the defendant no.1 preferred Regular Civil Appeal No.15/1984 in the Court of District Judge, Vadodara. Pending the appeal the defendant no.1 passed away. His heirs and legal representatives were substituted. The lower appellate Court held that the defendant no.1 had raised dispute as to the standard rent

of the suit premises. The said dispute was resolved by the learned trial Judge by judgment and order dated 23rd November, 1983 i.e. The learned trial Judge had not determined the standard rent pending the suit nor did he make any order determining interim standard rent. Hence, the defendant no.1 had no occasion to pay the amount of rent due or the rent pending the suit. The lower appellate Court accordingly quashed and set-aside the decree for possession passed in favour of the plaintiffs. Therefore, the present Revision Application.

On perusal of the records of the lower appellate Court and the rent receipts produced by the learned advocate Mr.Bukhari, it appears that even after the determination of the standard rent by the learned trial Judge on 23rd November, 1983, the defendant no.1 did not deposit the amount of arrears of rent. Pending the Appeal the defendant no.1 deposited a sum of Rs.4,100=00 (rent for a period of 13 years and 8 months) on 27th February, 1986 i.e. the rent due from 1st July, 1972 till the month of February, 1986. After the said first payment made on 27th February, 1986 the defendant no.1 deposited a total

sum of Rs.150=00 (rent for six months) on 13th March, 1986 and 5th May, 1986 (i.e the rent up to August, 1986). Once again the defendant no.1 fell into arrears of rent. He deposited a total sum of Rs.300=00 (rent for a period of 12 months) in the year 1992. Thereafter, no deposit had been made by the defendant no.1 until 26th April, 2005. On 26th April, 2005 the defendant no.1 has deposited a sum of Rs.4,200=00 (rent for a period of 14 years).

Section 12(3)(b) of the Rent Act confers protection upon a tenant against eviction on conditions that (i) on the first day of hearing of the suit or on or before such other date as the Court may fix, the tenant pays or tenders in Court the standard rent and permitted increases then due; (ii) thereafter, continues to pay or tender in Court such rent and permitted increases till the suit is finally decided; and (iii) pays cost of the suit. In the present case, as the question of standard rent and permitted increases was not decided until the decree for eviction was passed, the defendant no.1 ought to be excused for not paying the rent during the pendency of the suit. However, in the present case, the defendant no.1 has neglected to pay the rent pending the Appeal and

pending the Revision Application though the question of standard rent and permitted increases was decided by the trial Court as far back as in the month of November, 1983. As recorded herein above, the defendant deposited 14 years' rent in lump-sum in the month of April, 2005 after the present Revision Application was posted for hearing and still he is in arrears of rent for nearly 4 years (for 3 years and 10 months to be precise). In my view, the defendant is a tenant who has forfeited right to protection under Section 12(3)(b) of the Rent Act by neglecting to pay the rent pending the Appeal before the lower appellate Court and pending the Revision Application before this Court.

In view of the above discussion, I am of the view that the petitioners-plaintiffs are entitled to a decree for eviction as envisaged by Section 12(3)(b) of the Rent Act.

The Revision Application is allowed. The impugned judgment and order dated 26th February, 1993 passed by the Joint District Judge, Vadodara in Regular Civil Appeal No.15/1984 is quashed and set-aside. The decree passed by

the Small Causes Court, Vadodara in Rent Suit No.495/1990 is restored. Rule is made absolute with cost. The Registry shall send the writ forthwith.

(Ms. R.M.DOSHIT, J.)

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